

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION**

JAMES GARCIA, On Behalf of HIMSELF and All Others Similarly Situating,)	
)	
)	
<i>Plaintiff,</i>)	COLLECTIVE ACTION
)	
v.)	CASE NO. _____
)	
ATHENA CAPITAL, LLC d/b/a JOHNNY’S PIZZA,)	JUDGE _____
)	
<i>Defendant.</i>)	JURY DEMAND
)	

COLLECTIVE ACTION COMPLAINT

1. Plaintiff James Garcia (“Named Plaintiff”) brings this collective action on behalf of himself and all other similarly situated current and former employees against Defendant Athena Capital, LLC d/b/a Johnny’s Pizza (“Athena”), his employer, to recover unpaid overtime wages under the Fair Labor Standards Act (“FLSA”).

2. Athena is a franchisee of Johnny’s Pizza Franchise Systems, Inc. and operates a Johnny’s Pizza restaurant in Athens, Georgia. Named Plaintiff and those similarly situated are hourly-paid Cooks, Drivers/Dishwashers, Kitchen Managers, and Assistant Managers who worked for Athena during the applicable statutory period in its Athens, Georgia restaurant.

3. Named Plaintiff brings his FLSA claims on his own behalf and on behalf of all similarly situated employees of Athena as a collective action pursuant to 29 U.S.C. § 216(b).

JURISDICTION

4. This Court has jurisdiction over Named Plaintiff's claims because they are brought pursuant to 29 U.S.C. § 216(b) and because they raise a federal question pursuant to 28 U.S.C. § 1331.

5. Venue properly lies in this judicial district pursuant to 28 U.S.C. § 1391 because Defendant resides in this judicial district and because the claims arose in this judicial district.

PARTIES

6. Named Plaintiff James Garcia is a resident of Athens, Clarke County, Georgia and was employed by Athena to work in its Athens, Georgia restaurant from June 2017 to August 2018.

7. Defendant Athena Capital, LLC is a Georgia domestic limited liability company with its principal office located at P.O. Box 5165, Athens, Georgia, 30604. Defendant's registered agent in Georgia can be served at 220 College Avenue, Suite 300, Athens, Georgia, 30601.

8. Throughout the statutory period covered by this action, Athena employed individuals who are engaged in interstate commerce and/or in the production of goods for interstate commerce or are engaged in handling, receiving, selling, or otherwise working on goods or materials that were moved in or produced for interstate commerce. As such, Athena is and was covered by the FLSA.

FACTS

9. Named Plaintiff and those he seeks to represent in this action were employed by Athena as Cooks, Drivers/Dishwashers, Kitchen Managers, and Assistant Managers at its Johnny's Pizza restaurant in Athens, Georgia.

10. Named Plaintiff and those similarly situated routinely worked over forty (40) hours per week for Athena.

11. During the three-year period relevant to this lawsuit, Athena has employed dozens of Cooks, Drivers/Dishwashers, Kitchen Managers, and Assistant Managers at its Athens, Georgia restaurant. For employees working in these positions during the applicable statutory period covered by this lawsuit, Athena paid them a regular hourly rate for all hours worked. However, Athena's policy and practice was to not pay these employees the FLSA-mandated overtime rate for hours worked over forty (40) in a workweek. Instead, it was Athena's policy and practice to pay these employees the same hourly rate for all hours worked, regardless of whether the hours worked totaled less than or more than forty (40).

12. Throughout the applicable statutory period covered by this lawsuit, the Cooks, Drivers/Dishwashers, Kitchen Managers, and Assistant Managers employed by Athena at its Johnny's Pizza restaurant in Athens, Georgia were not exempted from the overtime requirements set by the FLSA.

13. From approximately June 2017 to December 2017, Named Plaintiff was employed by Athena as a Cook and a Driver/Dishwasher at its Johnny's Pizza restaurant in Athens, Georgia. From approximately December 2017 to August 2018, Named Plaintiff was employed by Athena as a Kitchen Manager at its Johnny's Pizza restaurant in Athens, Georgia. In each of these positions, Named Plaintiff was paid an hourly rate by Athena for each hour worked but was not paid the FLSA-mandated overtime rate for hours worked over forty (40) in a workweek.

14. Athena's own records demonstrate that Named Plaintiff, and those similarly situated, worked beyond forty (40) hours in a workweek but were only paid a straight-time

hourly rate for all hours worked, rather than the FLSA-mandated overtime rate for hours worked over forty (40).

15. One such example is an Earnings Statement issued by Athena to Named Plaintiff for hours worked at its Johnny's Pizza restaurant in Athens, Georgia from July 11, 2018, through July 24, 2018, which is attached as Exhibit A to this Complaint. During this time period, Athena paid Named Plaintiff an hourly rate of \$12.50 for 98.5 hours of work. *See* Exhibit A. However, Named Plaintiff was not paid an overtime rate for hours worked over forty (40) during this pay period. *See id.*

16. Another such example is an Earnings Statement issued by Athena to Named Plaintiff for hours worked at its Johnny's Pizza restaurant in Athens, Georgia from August 8, 2018, through August 21, 2018, which is attached as Exhibit B to this Complaint. During this time period, Athena paid Named Plaintiff an hourly rate for all hours worked but failed to pay him at the FLSA-mandated overtime rate for hours worked over forty (40) in a workweek. *See* Exhibit B.

17. A third such example is an Earnings Statement issued by Athena to Named Plaintiff for hours worked at its Johnny's Pizza restaurant in Athens, Georgia from June 27, 2018, to July 10, 2018, which is attached as Exhibit C to this Complaint. During this time period, Athena paid Named Plaintiff an hourly rate for all hours worked but failed to pay him at the FLSA-mandated overtime rate for hours worked over forty (40) in a workweek. *See* Exhibit C.

COLLECTIVE ALLEGATIONS

18. Named Plaintiff brings his FLSA claim pursuant to 29 U.S.C. § 216(b) on behalf of all individuals who, during any time within the past three years, were employed as Cooks,

Drivers/Dishwashers, Kitchen Managers, and Assistant Managers at Athena's Johnny's Pizza restaurant in Athens, Georgia.

19. Named Plaintiff's FLSA claims should proceed as a collective action because Named Plaintiff and other similarly situated workers, having worked pursuant to the common policies described herein, are "similarly situated" as that term is defined in 29 U.S.C. § 216(b) and the associated decisional law.

CAUSES OF ACTION

COUNT I

Violation of the Minimum and Overtime Wage Requirements of the FLSA

20. All previous paragraphs are incorporated as though fully set forth herein.

21. The FLSA requires that employees receive overtime premium pay of "not less than one and one-half times" their regular pay rate for hours worked over forty (40) in a workweek. *See* 29 U.S.C. § 207(a)(1).

22. Named Plaintiff is an employee entitled to the FLSA's protections. *See* 29 U.S.C. § 203(e).

23. Defendant is an employer covered by the FLSA. *See* 29 U.S.C. § 203(d).

24. In violating the FLSA, Athena has acted willfully and with reckless disregard of clearly applicable FLSA provisions.

PRAYER FOR RELIEF

WHEREFORE, Named Plaintiff prays for the following relief, on behalf of himself and all others similarly situated:

A. An order permitting this litigation to proceed as a collective action pursuant to 29 U.S.C. § 216(b);

- B. Prompt notice of this litigation, pursuant to 29 U.S.C. § 216(b), to all similarly situated workers;
- C. A finding that Athena violated the FLSA;
- D. A finding that Athena's FLSA violations are willful;
- E. A judgment against Athena and in favor of Named Plaintiff and all similarly situated workers for compensation for all unpaid and underpaid wages that Athena failed and refused to pay in violation of the FLSA;
- F. Prejudgment interest to the fullest extent permitted under the law;
- G. Liquidated damages to the fullest extent permitted under the FLSA;
- H. Litigation costs, expenses, and Plaintiff's attorneys' fees to the fullest extent permitted under the FLSA and Federal Rules of Civil Procedure; and
- I. Such other and further relief as this Court deems just and proper in equity and under the law.

JURY DEMAND

Named Plaintiff demands a jury as to all claims so triable.

Dated: October 11, 2018

Respectfully submitted,

/s/ Michael J. Moore

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** Pro Hac Vice Motion anticipated*

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